

## **Mitigation Plan (33 CFR 332.4(c)/40 CFR 230.92.4(c))**

A mitigation plan is required for all forms of compensatory mitigation, whether permittee-responsible mitigation, mitigation banks, or in-lieu fee mitigation projects.

### **Preparation and Approval of Mitigation Plans**

#### ***Permittee-Responsible Mitigation***

##### **Individual Permits**

- The permittee must prepare a draft mitigation plan and submit it to the district engineer (DE) for review.
- Then the permittee must prepare a final mitigation plan, which must be approved by the DE prior to issuing the individual permit.
- The final mitigation plan must be incorporated into the individual permit by reference.
- The final plan must include the 12 components listed below.
- The level of detail of the plan should be commensurate with the impacts.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

##### **General Permits**

- The DE may approve a conceptual or detailed mitigation plan.
- A final mitigation plan incorporating the 12 components listed below, at a level of detail commensurate with the impacts, must be approved by the DE before the permittee commences work in waters of the U.S.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

#### ***Using Mitigation Banks or In-Lieu Fee Programs***

##### **Individual Permits**

For permittees meeting their mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans only need to include components 4 (baseline information) and 5 (determination of credits), and the name of the mitigation bank or in-lieu fee program to be used.

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**Mitigation banks and in-lieu fee programs** must prepare a mitigation plan including the 12 components listed below for each mitigation project site.

## **12 Components of a Compensatory Mitigation Plan**

1. Objectives. A description of the resource type(s) and amount(s) that will be provided, the method of compensation (restoration, establishment, preservation etc.), and how the anticipated functions of the mitigation project will address watershed needs.
2. Site selection. A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the mitigation project site.
3. Site protection instrument. A description of the legal arrangements and instrument including site ownership, that will be used to ensure the long-term protection of the mitigation project site.
4. Baseline information. A description of the ecological characteristics of the proposed mitigation project site, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other characteristics appropriate to the type of resource proposed as compensation. The baseline information should include a delineation of waters of the United States on the proposed mitigation project site. A prospective permittee planning to secure credits from an approved mitigation bank or in-lieu fee program only needs to provide baseline information about the impact site.
5. Determination of credits. A description of the number of credits to be provided including a brief explanation of the rationale for this determination.
  - For permittee-responsible mitigation, this should include an explanation of how the mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.
  - For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.
6. Mitigation work plan. Detailed written specifications and work descriptions for the mitigation project, including: the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water; methods for

establishing the desired plant community; plans to control invasive plant species; proposed grading plan; soil management; and erosion control measures. For stream mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

7. Maintenance plan. A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
8. Performance standards. Ecologically-based standards that will be used to determine whether the mitigation project is achieving its objectives.
9. Monitoring requirements. A description of parameters monitored to determine whether the mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting monitoring results to the DE must be included.
10. Long-term management plan. A description of how the mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.
11. Adaptive management plan. A management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures.
12. Financial assurances. A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project will be successfully completed, in accordance with its performance standards.

Other information. The DE may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the mitigation project.

## **Attachment 3**

### **U.S. EPA-Region 5 General Mitigation Plan Requirements Elgin Community College**

#### **Mitigation Plan (33 CFR 332.4(c)/40 CFR 230.92.4(c))**

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- The level of detail of the plan should be commensurate with the impacts.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

###### **General Permits**

- The DE may approve a conceptual or detailed mitigation plan.
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- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

### ***Using Mitigation Banks or In-Lieu Fee Programs: Individual Permits***

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**Mitigation banks and in-lieu fee programs** must prepare a mitigation plan including the 12 components listed below for each mitigation project site.

### **12 Components of a Compensatory Mitigation Plan**

1. **Objectives.** A description of the resource type(s) and amount(s) that will be provided, the method of compensation (restoration, establishment, preservation etc.), and how the anticipated functions of the mitigation project will address watershed needs.
2. **Site selection.** A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the mitigation project site.
3. **Site protection instrument.** A description of the legal arrangements and instrument including site ownership, that will be used to ensure the long-term protection of the mitigation project site.
4. **Baseline information.** A description of the ecological characteristics of the proposed mitigation project site, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other characteristics appropriate to the type of resource proposed as compensation. The baseline information should include a delineation of waters of the United States on the proposed mitigation project site. A prospective permittee planning to secure credits from an approved mitigation bank or in-lieu fee program only needs to provide baseline information about the impact site.

**5. Determination of credits.** A description of the number of credits to be provided including a brief explanation of the rationale for this determination.

- For permittee-responsible mitigation, this should include an explanation of how the mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.
- For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.

**6. Mitigation work plan.** Detailed written specifications and work descriptions for the mitigation project, including: the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water; methods for establishing the desired plant community; plans to control invasive plant species; proposed grading plan; soil management; and erosion control measures. For stream mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

**7. Maintenance plan.** A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.

**8. Performance standards.** Ecologically-based standards that will be used to determine whether the mitigation project is achieving its objectives.

**9. Monitoring requirements.** A description of parameters monitored to determine whether the mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting monitoring results to the DE must be included.

**10. Long-term management plan.** A description of how the mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.

**11. Adaptive management plan.** A management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures.

**12. Financial assurances.** A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project **will** be successfully completed, in accordance with its performance standards.

Other information. The DE may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the mitigation project.

IN THE MATTER OF )  
)  
)  
Elgin Community College District 509 )  
Elgin, Kane County, Illinois )  
Respondent )  
)  
)  
PROCEEDINGS UNDER SECTION 309(a) )  
OF THE CLEAN WATER ACT )  
33 U.S.C. § 1319(a) )

DOCKET NO. V-404-AOC-13- )  
)  
FINDINGS OF VIOLATION )  
AND )  
COMPLIANCE ORDER )  
on CONSENT )

## A. FINDINGS

- Elgin Community College, District No. 509  
1700 Spartan Drive  
Elgin, Kane County, Illinois 60123

3. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

5. A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,



container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

6. A "pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

7. "Wetlands" are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 232.2(f).

8. Respondent owns and controls the property situated in located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment1).

9. Between June 2009 and continuing through March 2012, Respondent, using backhoes, excavators, bulldozers and other earth moving equipment other excavation equipment dredged and filled approximately 5.52 acres of wetlands abutting wetlands of Otter Creek, a tributary to the Fox River, which is a navigable water of the United States, under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, respectively, 33 U.S.C. § 1344(a) and 33 U.S.C § 403, (Attachment 2).

10. Prior to initiating work in June 2009, as identified in Paragraph 9, above, Respondent completed the following activities on the site:

(a) In July 1991, Respondent submitted a Section 404 CWA permit application to the Corps. The permit application included a wetland delineation identifying "jurisdictional" wetlands located on the site adjacent to Otter Creek.

(b) In 1994, Kane County completed an assessment and a advanced identification of Wetlands and rated the wetlands on the site (approximately 91 acres), as wetland with high functional values for stabilizing vegetation, retainingg sediments, removing nutrients, and providing stormwater retention.

(c) In July 2002, Respondent submitted a Section 404 CWA permit application to the Corps including a wetland assessment delineating five wetland areas and four waters of the United States on the site.

(d) In August 2005, Respondents submitted a Section 404 CWA permit application to the Corps. The application included a wetland delineation which in part, re-affirmed the wetland assessment identified in Paragraph 10 (c), above.

11. On June 7, 2012, the Corps, issued a "cease and desist" ( C& D) letter to Respondents alleging that dredged and fill materials were discharged into wetlands, identified in Paragraph 9, above, in violation of Sections 404 and 301 of the CWA, 33 U.S.C. §§1344 and 311, respectively. The violations alleged by the Corps were undertaken during construction of a new stormwater detention pond and expansion of a student parking lot.

12. On August 15, 2012, in consultation with the Corps, EPA, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), issued an formal information request to Respondent seeking to clarify the nature, extent and circumstances surrounding the alleged violation, cited by the Corps in Paragraph 11, above.

13. On October 10, 2012, the Corps and EPA visited the site concluding the site and the wetlands are physically abutting Otter Creek, and are hydraulically connected to the Fox River, a navigable-in-fact water of the United States, under Section 10 of the Rivers and Harbors Act (RHA), 33 U.S.C. § 403.

14. At all times relevant to the activities in Paragraph 9, above, Respondents did not and presently do not have a Section 404 CWA permit, authorizing the discharge of dredged and fill materials into wetlands abutting Otter Creek.

15. The wetlands and other waters of the United States identified in Paragraph 9, above are bordering, contiguous or neighboring Otter Creek, which is tributary to the Fox River, an interstate and navigable waters of the United States.

16. The wetlands filled and/or disturbed by the filling activity referenced in Paragraph 9, above, are "waters of the United States" as defined at 40 C.F.R. § 232.2(q) and "navigable waters", as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. Respondent did not have and presently does not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in Paragraphs 9, above, into wetlands and other waters of the United States.

18. The Respondent is a "person(s)" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. The machinery referenced in Paragraphs 9, above, constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The discharged dredged materials referenced in Paragraph 9, above, constitutes "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The placement of the material in the wetlands referenced in Paragraph 9, above, constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Each discharge by Respondent of pollutants into navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

23. Each day the discharged material remains in the wetland without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

## **B. CONSENT ORDER**

**BASED UPON THE FOREGOING FINDINGS**, and pursuant to the authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 309(a)(3), vested in the Administrator, EPA, delegated to the Regional Administrator, and duly redelegated to the undersigned, **IT IS HEREBY ORDERED AND AGREED BY RESPONDENT AND EPA:**

1. Respondents immediately cease further discharges of fill material into the wetlands on the site, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. § 1251, et seq.

2. Respondent has provided satisfactory and responsive answers to EPA's Section 308 information request, identified in Paragraph 12, above.

3. A Section 404 CWA permit may be issued by the Corps, pursuant to Section 404 (e) of the CWA, 33 U.S.C. § 1344(a) and 33 CFR § 323 (e)(2). Specifically, under Regional permit No. 6 (Attachment 4), the Corps may authorize any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration or environmental benefit in compliance with "the terms of a final written non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, or the terms of an EPA 309(a) order or consent decrees resolving a violation of Section 404 of the Clean Water Act."

4. Within 90 days from the effective date of this Consent Order, Respondent agrees to obtain, consistent with the requirements of Paragraph B(3), above, authorization from the Corps for the dredged and fill materials to remain in place, provided that replacement of the wetland impacts occurs in the following manner:

(A) Consistent with the mitigation requirements of Attachment 3, a plan to restore the environmental benefits (functions and values) to approximately 17.87 acres of wetlands through creation, restoration and/or enhancement, including:

(i) Onsite wetland creation (5.52 acres), wetland enhancement (9.97 acres) and buffer establishment (2.38 acres) as shown in the plans entitled, "Elgin Community College: Potential Wetland Creation and Enhancement Plan" (11-25-12);

(ii) A monitoring and maintenance plan for the onsite wetland creation and enhancement, above, necessary to control and manage invasive species.

(iii) A detailed implementation schedule identifying specific activity dates and milestones for initiating and completing all creation, restoration and/or enhancement, monitoring and protection activities, including but not limited bidding dates, contract award dates, notices to proceed with construction initiation and planting, dates for construction and planting completion, and scheduling of monitoring/inspection reports to the Corps.

(B) A plan to purchase no less than an additional 5.3 acres of wetland mitigation credits at a Corps approved mitigation bank.

(B) All submittals under Paragraph B (4) (A and (B), above, shall be provided to:

Leesa Beal, Chief  
Regulatory Branch  
U.S. Army Corps of Engineers  
Chicago District  
111 North Canal Street  
Chicago, Illinois 60606-7206

Keith Wozniak/Michael Machaelek  
Regulatory Branch  
U.S. Army Corps of Engineers  
Chicago District  
111 North Canal Street  
Chicago, Illinois 60606-7206

and

David Schulenberg  
Senior Enforcement Officer  
U.S. EPA, Region 5  
Water Division (WW-16J)  
77 W. Jackson Boulevard  
Chicago, Illinois 60604-3590

(C) Respondent admits that the Administrator of EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319.

(D) Respondent neither admit nor deny the specific factual allegations and legal conclusions, identified in Paragraphs A(1) – A(12), above.

(E) Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

(F) U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

(G) Neither the issuance of this Order by the U.S. EPA nor compliance with its terms affects Respondents' ongoing obligation to comply with the CWA or any other Federal, state or local law or regulation, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein.

11. Neither the issuance of this Consent Order by the U.S. EPA, nor compliance with this Consent Order by the Respondent shall be deemed to relieve the Respondent of liability for any penalty, remedy or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b),(c) or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each and every violation specified in this Consent Order.

10. Violation of the terms of this Consent Order may result in the U.S. EPA taking further enforcement action under Section 309 of the CWA. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, U.S. EPA may assess civil administrative penalties of twenty-seven thousand five hundred dollars (\$27,500) per day of violation, up to a maximum of one hundred fifty-seven five hundred dollars (\$157,500) under 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$27,500 per day of violation and civil injunctive relief for violations of the CWA under 33 U.S.C. § 1319(b).

11. Furthermore, U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

12. This Order becomes effective 10 days from the date it is executed and signed by the authorized representative of EPA.

CONFIDENTIAL DRAFT

In the Matter of:  
Elgin Community College  
Docket No. V-404-AOC-13-

Dated:

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**Dr. David Sam, Ph.D.**  
**President, Elgin Community College**

Dated:

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**Tinka G. Hyde**  
**Director, Water Division**  
**U.S. Environmental Protection**  
**Agency, Region 5**